

**FLATHEAD COUNTY BOARD OF ADJUSTMENT
MINUTES OF THE MEETING
JUNE 6, 2017**

CALL TO ORDER <i>5:59 pm</i>	A meeting of the Flathead County Board of Adjustment was called to order at approximately 6:00 p.m. at the South Campus Building, Suite 200, 40 11 th Street West, Kalispell, Montana. Board members present were Ole Netteberg, Gina Klempel, Mark Hash, and Roger Noble. Cal Dyck had an excused absence. Erik Mack, Kari Nielson, Rachel Ezell, and Mark Mussman represented the Flathead County Planning & Zoning Office. There were 5 people in the audience.
APPROVAL OF MINUTES <i>5:59 pm</i>	Klempel motioned and Netteberg seconded to approve the May 2, 2017 minutes as written.
ELECTION OF OFFICERS <i>5:59 pm</i>	Election of officers postponed until a full Board is present.
PUBLIC COMMENT <i>(Public matters that are within the jurisdiction of the Board 2-3-103 M.C.A)</i> <i>6:00 pm</i>	None
WILLIAM MONTGOMERY (FCU-17-04) <i>6:00 pm</i>	A request by William Montgomery for a conditional use permit to establish a School on property located within the Blanchard Lake Zoning District and zoned <i>SAG-5 Suburban Agricultural</i> . The applicant intends to develop a small school with curriculum in arts, health, preschool, music, as well as a variety of vocational courses. The subject property is located at 5729 U.S. Highway 2, south of Whitefish, Montana and contains approximately 1.2 acres. The property can legally be described as Tract 3ABCB in Section 13, Township 30 North, Range 22 West, P.M.M., Flathead County, Montana.

**STAFF REPORT
(FCU-17-04)
6:00 pm**

Nielson reviewed Staff Report FCU-17-04 for the Board.

**BOARD
QUESTIONS
6:01 pm**

None

**APPLICANT
PRESENTATION
6:01 pm**

Bill Montgomery-5729 Highway 93 South, Whitefish-stated he is involved in community based educational programs. He stated there are organizations and individuals who would like to offer courses on various topics that do not qualify as non-profits and he would like to use the property as a commercial school.

**BOARD
QUESTIONS
6:04 pm**

None

**PUBLIC
COMMENT
6:04 pm**

None

**STAFF
REBUTTAL
6:04 pm**

None

**APPLICANT
REBUTTAL
6:04 pm**

None

**BOARD
DISCUSSION
6:04 pm**

Klempel asked about fencing.
Montgomery stated the property was fenced.

**MAIN MOTION
TO ADOPT F.O.F.
(FCU-17-04)
6:05 pm**

Netteberg made a motion seconded by Klempel to adopt the Findings-of-Fact as written.

**BOARD
DISCUSSION
6:05 pm**

**ROLL CALL TO
ADOPT F.O.F.
6:05 pm**

On a roll call vote the motion passed unanimously.

**MAIN MOTION
TO APPROVE
(FCU-17-04)
6:05 pm**

Klempel made a motion seconded by Netteberg to accept Staff Report FCU-17-04 as Findings-of-Fact and Approve the Conditional Use.

**BOARD
DISCUSSION
6:06 pm**

None

**ROLL CALL TO
APPROVE
6:06 pm**

On a roll call vote the motion passed unanimously.

**TIMOTHY &
ELIZABETH
HEAPS
(FCU-17-05)
6:07 pm**

A request by Timothy & Elizabeth Heaps for a conditional use permit for a Class 1 Community Residential Facility within the Lower Side Zoning District and zoned *SAG-5 Suburban Agricultural*. The applicants are requesting to use the dwelling on the property as a Class 1 Community Residential Facility with up to four (4) residents. The subject property is located at 260 Windsong Way near Kalispell, MT and is approximately 10 acres in size. The property can legally be described as Tract 7B in S ½ of SW ¼ in Section 15, Township 28 North, Range 22 West, P.M.M., Flathead County, Montana.

**STAFF REPORT
(FCU-17-05)
6:07 pm**

Ezell reviewed Staff Report FCU-17-05 for the Board.

**BOARD
QUESTIONS
6:11 pm**

Noble asked about road width standards.

Rachel explained that it was a residential use and was not required to meet commercial road width standards.

**APPLICANT
PRESENTATION
6:11 pm**

Timothy Heaps-260 Windsong Way-He gave a short history of the adult foster care home which has been running for the past 5 years. It was an unintentional oversight to get the CUP for the location of this facility. He mentioned that the neighborhood had tried to get a road users agreement and easement together in the past but had not been successful until that day. He had the signatures of all neighbors who use Windsong Way from Smith Lake Road to 260 Windsong. Mr. Heaps mentioned that the neighbors were not there because they appeared to be happy with the easement and road user's agreement.

**BOARD
QUESTIONS
6:16 pm**

None

**PUBLIC
COMMENT
6:16 pm**

None

**BOARD
QUESTIONS
6:16 pm**

None

**STAFF
REBUTTAL
6:16 pm**

None

**BOARD
QUESTIONS
6:16 pm**

None

**APPLICANT
REBUTTAL
6:16 pm**

None

**BOARD
DISCUSSION
6:16 pm**

Hash asked if all the people using the road signed the road maintenance agreement.

Heaps talked about the road maintenance agreement stating that only the people who had houses and lived on the property would be responsible for maintaining the road.

Hash asked about the easement.

Heaps talked about who had signed the easement and where their properties were located.

Klempel asked if the fire department had any problems with egress and ingress to the property.

Ezell stated they did not.

Noble commented that a COSA re-write would still need to be done.

**MAIN MOTION
TO ADOPT F.O.F.
(FCU-17-05)
6:25 pm**

Netteberg made a motion seconded by Noble to adopt the Finding-of-Fact as written.

**BOARD
DISCUSSION
6:25 pm**

None

**ROLL CALL TO
ADOPT F.O.F.
6:25 pm**

On a roll call vote the motion passed unanimously.

**MOTION TO
RECOMMEND
APPROVAL
(FCU-17-05)
6:25 pm**

Klempel made a motion seconded by Netteberg to accept Staff Report FCU-17-05 as Findings-of-Fact and Approve the Conditional Use Permit with one (1) additional condition.

Condition 9. The road easement will be supplied to the Planning and Zoning Office to complete the file.

**BOARD
DISCUSSION
6:26 pm**

None

**ROLL CALL TO
APPROVE
6:26 pm**

On a roll call vote the motion passed unanimously.

**JAMES HANSON
BY JOHN
HENDRICKSON
KGEZ
(FCU-17-06)**

~~A request from John Hendricks of KGEZ AM 600 on behalf of James Hanson for a conditional use permit for the placement of a 'Communication tower, mast' on property located at the northeast corner of Farm to Market Road and Clark Drive intersection near Kalispell, MT. The subject property is approximately 115.2 acres and can legally be described Tract 3B in Section 16, Township 29 North, Range 22 West, P.M.M., Flathead County, Montana. This agenda item will be reviewed by the West Valley Land Use Advisory Committee on Tuesday, May 23, 2017 @ 7:00 pm at the Stillwater Grange, 1370 Old Reserve Drive in Kalispell.~~

THIS AGENDA ITEM HAS BEEN POSTPONED UNTIL THE JULY 11, 2017 MEETING.

**ALEX HOGLE
(FCU-17-07)
6:26 pm**

A request from Alex Hogle for a conditional use permit to establish a 'Bed and Breakfast' on property located within the Willow Glen Zoning District and zoned R-1 *Suburban Residential*. The applicant intends to construct an addition to the existing home located at 415 Anderson Lane to accommodate sleeping rooms and common area for the Bed & Breakfast. The subject property is approximately 6.2 acres and can legally be described as Tract 2IB in Section 9, Township 28 North, Range 21 West, P.M.M., Flathead County, Montana.

**STAFF REPORT
(FCU-17-07)
6:27 pm**

Nielson reviewed Staff Report FCU-17-07 for the Board.

**BOARD
QUESTIONS
6:28 pm**

Hash asked about water quality and traffic concerns.

Nielson stated that the water quality concerns would be taken care of through review by Environmental Health.

Nielson stated the traffic was a little harder as the last traffic count had been done in 2005.

**APPLICANT
PRESENTATION
6:30 pm**

Alex Hogle-415 Anderson Lane, Kalispell-gave some background on the property. He talked about the existing drain field stating that it could not be updated and was limited to a four (4) bedroom capacity. Hogle talked about traffic and the review being based on 2005 traffic counts. He addressed concerns from the neighbors regarding noise stating he would install fencing, impose quiet hours from 11 pm to 7 am, and print rules of operation and his expectation of his guest including rules for pets. He talked about the commercial versus residential aspect of Bed and Breakfasts in general.

**BOARD
QUESTIONS
6:57 pm**

None

**PUBLIC
COMMENT
6:57 pm**

Soren Koetter-409 Anderson Lane, Kalispell-had concerns about the quiet hours, traffic, and pets. He asked about resident occupancy and if the owner was required to be on the property at all times.

Mussman answered the questions about resident occupancy stating the manager would not be required to be on the property at all times.

Koettner asked about the septic and if it could be expanded.

Noble stated that he was permitted for a four (4) bedroom which is what Hogle was asking for; however, if he wanted to expand the applicant would be required to be to go through review and be re-permitted.

Koettner asked about inspections.

Mussman stated that annual inspections by environmental health would be conducted.

Koetter stated he was in support of Hogle's project.

**STAFF
REBUTTAL
7:07 pm**

Nielson stated that the planning office did consider a bed and breakfast a residential use. As far as traffic generation, Nielson did believe that a motel was an appropriate comparison as it is based on the number of rooms.

**APPLICANT
REBUTTAL
7:08 pm**

None

**BOARD
DISCUSSION
7:08 pm**

Netteberg asked about insurance for the bed and breakfast.

Hogle stated he had no concerns.

Hash commented on the quality of Hogle's presentation, but stated that the Conditional Use Permit ran with the property and while the applicant may have good intentions, the intentions and goals of the next property owner may be different. Hash then asked the applicant if he was comfortable adding conditions to ensure the Bed and Breakfast Establishment will be run appropriately in the future.

Hogle stated he had not thought about it.

Noble suggested a condition about fencing.

This was discussed at length.

Hash asked about rules and regulations for the bed and breakfast and adding a condition requiring rules of operation and quiet hours.

Hogle agreed to these requirements.

**MAIN MOTION
TO ADOPT F.O.F.
(FCU-17-07)
7:21 pm**

Noble made a motion seconded by Netteberg to adopt the Findings-of-Fact as written.

**BOARD
DISCUSSION
7:21 pm**

None

**ROLL CALL TO
ADOPT F.O.F.
7:21 pm**

On a roll call vote the motion passed unanimously.

**MAIN MOTION
TO APPROVE
(FCU-17-07)
7:21 pm**

Noble made a motion seconded by Netteberg to accept Staff Report FCU-17-07 as Findings-of-Fact and Approve the Conditional Use Permit with the addition of two (2) more conditions.

1. *Quiet hours shall be between the hours of 11:00 pm and 7:00 am.*
2. *Reasonable privacy fencing shall be installed on the northern property boundary to the satisfaction of the property owner to the north and the applicant.*

**BOARD
DISCUSSION
7:23 pm**

The Board, staff and the applicant discussed fencing.

Hash talked about the rules and regulations of the bed and breakfast.

Netteberg retracted his second of the motion on the floor and Noble amended his motion to include three additional conditions regarding quiet hours, fencing, and implementing rules.

1. *Quiet hours shall be between the hours of 11:00 pm and 7:00 am.*
2. *Reasonable privacy fencing shall be installed on the northern property boundary to the satisfaction of the property owner to the north and the*

applicant.

3. *The owner of the Bed and Breakfast Establishment shall implement rules and regulations to mitigate impacts to the neighborhood.*

**ROLL CALL TO
APPROVE**
7:27 pm

On a roll call vote the motion passed unanimously.

OLD BUSINESS
7:28 pm

Mussman talked about the status of the short term rental text amendment stating the Commissioner's had adopted the Resolution of Intent.

NEW BUSINESS
7:28 pm

Mussman talked about the lawsuit filed by Clif and Cheryl Palmer against a conditional use permit approved by the Board for Monica Harris and Lisa Gilbert. He gave the Board a copy of the lawsuit.

ADJOURNMENT
7:30 pm

The meeting was adjourned at approximately 7:30 pm on a motion Noble. The next meeting will be held at 6:00 pm on July 11, 2017.



Mark Hash, Chairman



Danene Thornton, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED: 9 5 /17